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TO COUNTY ASSESSORS:

2017 LITIGATION

This letter summarizes court cases involving property tax issues that were decided in 2017 by the California Supreme Court, one of California's Courts of Appeal, or the United States Ninth Circuit Court of Appeals.

Williams & Fickett v. County of Fresno (2017) 2 Cal.5th 1258

When an assessment on property is challenged on the ground that the taxpayer does not own the property, the California Supreme Court concluded that as part of the exhaustion of administrative remedies requirement, the taxpayer must first seek an assessment reduction through the assessment appeals process (or obtain a stipulation that such proceedings are unnecessary under Revenue and Taxation Code¹ section 5142, subdivision (b)) in order to bring a superior court action seeking reduction of the tax under section 5140, thus overruling *Parr-Richmond Industrial Corp. v. Boyd* (1954) 43 Cal.2d 157.

California State University, Fresno Association, Inc. v. County of Fresno (2017) 9 Cal.App.5th 250

The Court of Appeal held that where a party applies for reduced assessments pursuant to section 1603 and does not designate the applications as claims for refund, a refund claim must be filed within one year after the assessment appeals board makes its final determination on the applications and mails written notice of its determination to the applicant under the clear language of section 5097(a)(3)(A)(i). Since the taxpayer did not file its claim for refund within the one-year time limit, the superior court lacked jurisdiction over the property tax refund action. Further, the taxpayer's position that the one-year period does not begin to run until after the disputed taxes are paid is inconsistent with the unequivocal language of the statute.

Luz Solar Partners Ltd., III et al., v. San Bernardino County (2017) 15 Cal.App.5th 962

The Court of Appeal held that the Board of Equalization correctly interpreted applicable law in setting forth the method of assessing the value of solar properties in Letters To Assessors 2009/024 (*Decline in Value: Excluded New Construction*) and 2012/053 (*Guidelines for Active Solar Energy Systems New Construction Exclusion*). Pursuant to section 51, the assessor is to base the tax assessment on the lesser of the solar property's factored base year value (that is, on

¹ All statutory references are to the Revenue and Taxation Code, unless otherwise provided.

nonsolar equipment only under section 73) or the solar property's current full cash value (that is, both nonsolar and solar equipment). The appropriate appraisal unit includes both the nonsolar and solar equipment even though the solar equipment remains exempt from taxation under section 73.

***Desert Water Agency v. United States Department of the Interior* (2017) 849 F.3d 1250**

Federal regulation 25 C.F.R. section 162.017 provides that, subject only to federal law, permanent improvements on leased Indian land, without regard to ownership of those improvements, are not subject to any fee, tax, or assessment imposed by any state or political subdivision of a state. The Ninth Circuit Court of Appeals held that this federal regulation did *not* preempt taxes and fees Desert Water Agency assessed against non-Indians who leased lands within the Indian reservation, and thus the agency lacked standing to challenge the regulation. The court also stated that, in the generality of cases, federal and tribal interests are strong enough to have a preemptive effect, but the courts must decide whether any *specific* state tax is preempted by applying the *Bracker* test. (*White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136.)

***JetSuite, Inc. v. County of Los Angeles* (2017) 16 Cal.App.5th 10**

The Court of Appeal held there was substantial evidence to support a finding that JetSuite did not show that any other state acquired situs over JetSuite's six jets, which operated as unscheduled air taxis offering on-demand flights in 42 states and six countries. The "single landing" situs rule created by section 1161, subdivision (b), applies, by its plain language, only to fractionally owned aircraft. The fact that an aircraft touches down in another state, without more, does not mean that the other state has acquired tax situs over the aircraft under the traditional due process test for situs such that California may no longer tax the full value of the aircraft.

The full text of the California court cases may be viewed from the California Courts website at www.courts.ca.gov/opinions-slip.htm. The full text of the *Desert Water Agency* court case may be viewed from the United States Courts Ninth Circuit website at www.ca9.uscourts.gov/opinions/index.php. If you have any questions regarding these court cases, please contact our Assessment Services and Training Unit at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung, Chief
County-Assessed Properties Division
Property Tax Department

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